IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/09/2003

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 415 of 1995

1. Mohandoss
2. Mohandoss
3. Govindaraj
4. Raj Kannu ... Appellants

-Vs-

State, rep. by Inspector
of Police, Valangiman Circle,
Cr.No.152 of 1993 on the file of
Inspector of Police, Nachiyar
Koil Police Station. ... Respondent

Prayer: Appeal against the judgment passed by the learned Sessions Judge, Thanjavur, in S.C.No. 167 of 1994 dated 17.3.1995.

!For Appellants : Mr.V.Gopinath, S.C.
For M/s.K.S.Rajagopalan and
S.Panneerselvam for A-1 to A-3

: Mr.A.Balaguru for A-4

^For Respondent : Mr.V.Arul
Govt. Advocate (Crl. Side)

:J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR,. J)

The appellants, four in number, who, in this judgment, will be referred to as A-1 to A-4 in the order they were arrayed before the learned Sessions Judge, Thanjavur, in Sessions Case No.167 of 1994, challenge their conviction and sentence by preferring the above appeal. The allegation against them is that at 6.00 a.m. on 4.3.93, they wrongfully restrained Sundaramoorthy, the deceased in the case, while he was coming in a cycle and that thereafter, indiscriminately cut him with aruvals, resulting in his death. The learned trial Judge, finding all the accused guilty, sentenced

each one of them to one month simple imprisonment under Section 341 I.P.C., while he sentenced them to suffer imprisonment for life for the offence of murder.

2. The case of the prosecution is as follows:-

P.W.1 is the father of the deceased and P.W.2 is the younger brother of the deceased. They were residing at Thuraiyur village. P.W.4 was also residing in the same village. About three years prior to the date of incident, P.W.1 obtained lease to catch fish from a temple tank from P.W.6. A-1 and his henchmen were preventing P.W.1 from catching fish in the said tank and therefore, P.W.1 had to file a civil suit before the Court of District Munsif at Kumbakonam. He also obtained a permanent injunction and therefore, there were ill-feelings between A-1 and his friends, A-2 to A-4 on the one side and the deceased family on the other side. On 1.3.93, a private

complaint was given by A-2 against the deceased and another alleging that they have damaged his scooter. This is said to be the motive for the occurrence, which took place at 6.00 a.m. on 4.3.93.

3. On 4.3.93 at 6.00 a.m., the deceased left the house for Palayanallur village to get agricultural labourers. P.W.1 and his younger son, P.W.2, went to a tamarind tree to pick up tamarind fruits and on the north of the tamarind tree, there was a temple. While P.Ws.1 and 2 were picking tamarind fruits, they saw the deceased coming from east in a cycle. At that time, A-1 to A-4 were seen rushing towards the deceased Sundaramoorthy and each were in possession of an aruval. The deceased was prevented from proceeding in his cycle and A-4 commenced the attack by cutting him on the left hand. The deceased, dropping the cycle, ran towards west, chased by A-1 to A-4. They caught hold of the deceased and inflicted indiscriminate cuts upon his body. Thereafter, they ran away from the place. P.Ws.1 to 5 and one Manoharan, who were present, witnessed the incident. At the scene, a moped was seen parked. P.Ws.1 and 2 went near Sundaramoorthy, where he was cut and on examining him, found him dead. P.W.1 left the scene of occurrence to Nachiyar Koil police station and narrated the incident to P.W.8, the Sub-Inspector, at 10.00 a.m. and the Sub-Inspector asked P.W.1 to give a written complaint and accordingly, P.W.1 gave a written complaint, detailing the incident. The said complaint is Ex.P.1. On the complaint, Ex.P.1, P.W.8 registered a case in Crime No.152 of 1993 against the accused. A copy of the printed first information report is Ex.P.4. The express reports were despatched to the higher officials.

4. P.W.12, the Circle Inspector of Police of Kumbakonam South Circle, who was also holding additional charge of Valangiman Circle, on receipt of the information about the registration of the grave crime, proceeded to the scene of occurrence and reached it at 11.15 a.m. and in the presence of P.W.1, prepared an observation mahazar, Ex.P.2 and drew a rough sketch, Ex.P.11. At about 1.00 p.m., he seized M.O.1, the cycle, M.O.2, the blood-stained bedspread, M.O.3, a lungi, M.O.4, the blood-stained tar portion, M.O.5, the sample tar portion, M.O.6, the blood-stained earth and M.O.7, the sample earth, under a mahazar, Ex.P.3. The inquest was conducted between 1.

30 p.m. and 4.30 p.m. over the body of Sundaramoorthy in the presence of panchayatdars and the inquest report is Ex.P.12. At the time of inquest, P.Ws.1 to 5 were questioned and their statements were recorded. After the inquest, the body was handed over to a police constable, P.W.10, with a requisition to the doctor for conducting autopsy.

5. On receipt of the requisition, P.W.11, the Civil Assistant Surgeon attached to Government Hospital, Kumbakonam, conducted autopsy on the body of Sundaramoorthy and he found the following injuries:-
1. A deep cut injury, right wrist extending from radial end to the ulnar end dorsal aspect. Both bones in this area, deeper muscles, and vessels and nerves cut totally. The ventral aspect of the skin left uninjured. The hand is hanging in it 10 cm. x 6 cm. x 4 cm. The wound is full of clotted and dried blood with mud.
2. A deep cut in the left arm just below the left elbow, posterior aspect 12 cm. x 10 cm. Both bones larger vessels and muscles cut over this region. The cut forearm is hanging on the left out vertical uninjured skin-horizontal. Wound is covered with clotted and dried blood with mud.
3. A deep cut injury on the left forearm, medial aspect middle 1/3rd oblique. The shaft of the ulnar bone and vessels and muscles and nerves seen cut. 8 cm. x 4 cm x 3 cm.
4. Oblique cut injury 2 cm. above the previous injury, muscle deep. 4 cm. x 2 cm. medial aspect. Clotted blood present.
5. Extensive cut injury on the left upper arm extending from the middle 1/3rd upto the axilla, medial aspect. 15 cm. x 10 cm. bone deep. The deeper muscles cut and hanging from the wound. Deeper vessels cut.
6. An extensive cut injury starting from the right side of the neck about 3 cm. below and 6 cm. right, the mentum running left to the back of the neck horizontal about 20 cm. with 10 cm. of breadth in the centre. The ends are narrowed; shape irregular. The trachea and oesophagus have been completely cut just above the hyoid bone. The big vessels and both side of the trachea and the muscles cut. The head is hanging on the uninjured cervical vertebra. The wound is full of clotted and dried blood with mud.
7. A cut injury 2 cm. below the centre of the previous injury, parallel 4 cm. x 2 cm. muscle deep in the left side of the neck.
8. A cut injury, lower half of the left external ear cutting it into two 5 cm. horizontal.
9. A cut injury in the left post auricular region upper half horizontal 8 cm. x 4 cm. the deeper temporal bone is severed superficially.
10. A cut injury on the left side of face horizontal extending from the lateral wall of left orbit to the left ear injury middle. Skin deep 6 cm. x 1/2 cm.
11. A curved cut injury on the centre of the frontal aspect of the scalp. A-P. Bone deep 4 cm. x 2 cm.
12. Cut injury right side of the frontal region, horizontal 4 cm. x 2 cm. bone deep.
13. A gapping cut injury on the right side of the occipito parietal region, horizontal 6 cm. x 8 cm. bone deep.
14. A spindle shaped injury on the right scapular region, muscle deep, 2 cm. x 1 cm. x 2 cm. horizontal.
15. A spindle shaped cut injury just 1 cm. below the previous injury oblique

3 cm. x 2 cm. x 2 cm. muscle deep.
16. A cut injury 1 cm. below the previous injury, vertical 3 cm. x 1 cm. muscle deep. All in the right scapular region.
17. A cut injury centre of the occipital region vertical in direction bone deep 6 cm. x 2 cm. The occipital bone injuries superficially.

The doctor issued Ex.P.10, the post-mortem certificate, with his opinion that the deceased Sundaramoorthy died on account of asphyxia due to tracheal cut and shock due to extensive haemorrhage due to the cut to the bigger vessels and the death would have occurred about 10 hours prior to autopsy.

6. P.W.12, continuing with his investigation, questioned P.W.6, 7, 10 and others and recorded their statements. He directed the SubInspector, P.W.8, to make arrangements to arrest the accused. M.Os.8 and 9, the clothes of the deceased, produced by P.W.10, were seized under Form 95 and further investigation was taken up by P.W.13, the Inspector of Police, Valangiman Circle, on 11.3.93. P.W.13, on taking up investigation in the crime, verified the investigation conducted by P.W.12 and on 12.3.93, he examined P.W.11 and recorded his statement. He questioned P.Ws.2, 8 and others on the same day. On 4.3.93, A-1 and A-4 surrendered before Judicial Magistrate No.2, Kumbakonam and A-3 surrendered before the same Court on 8.3.93. A-2 surrendered before Judicial Magistrate, Pattukkottai on 5.3.93. On 4.8.93, the material objects were forwarded to Court with a requisition, Ex.P.5, to send them for analysis and after the completion of investigation, the final report was filed against the accused on 18.8.93.

7. The accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them and they denied all the incriminating circumstances. A-1 filed a written statement, in which, he has stated that there was no injunction against him as claimed by P.W.1 in his evidence and he denied the evidence of P.W.1 that there was enmity between him and his friends on one side and the family of the deceased on the other side. He has stated that on 4.3.93, he and A-2 to A-4 did not cut the deceased and it was not the season for harvesting tamarind fruits from the tamarind tree and further stated that P.W.4 was working under P.W.1 as a domestic servant in the house and that he has no properties. He has further alleged that P.W.4 is the henchman of P.W.1 and the witnesses had come out with false evidence implicating him and the other accused in the crime. He has also alleged in the said statement that Ex.P.1 was later prepared after the arrival of the police officers. A-2, in his written statement, stated that because he gave a private complaint against the deceased on 1.3.93, he has been implicated in the crime. D.W.1 was examined by the accused to show that on the date of incident, he was proceeding in a cycle to Marudhanallur at 5.00 a.m. to harvest paddy and along with him two others were also present. According to him, he saw the dead body of Sundaramoorthy near the temple and found several cut injuries on the dead body and that on seeing the dead body of Sundaramoorthy, he went and informed P.W.1 and thereafter, P.Ws.1, 2 and others reached the scene of occurrence and that he went away to Maruthanallur to attend to his job. In short, the case of the defence is that the occurrence had taken place much earlier to 6.00 a.m. and the witnesses could not have been present at the time of occurrence as claimed by them.

8. The learned respective counsel appearing for the appellants/ accused contend that the occurrence should have been taken place much earlier to 6.00 a.m. and there should have been another complaint, which had been suppressed and the present complaint, Ex.P.1, must have been prepared after the arrival of the police officers as suggested to the witnesses by the defence. In support of the said plea, the learned counsels drew our attention to the evidence of the witnesses and in particular, to the evidence of P.W.1, the father of the deceased and P.W.7, the Village Administrative Officer. It is their further submission that P.W.7 was unjustifiably treated as hostile by the prosecution and the Presiding Officer ought to have considered the statement of P.W.7 recorded under Section 161 Cr.P.C., before he gave permission to the prosecution to treat him as hostile, since P.W.7 did not detract from his earlier statement given to the officer and recorded under Section 161 Cr.P.C. and there is no reason as to why the prosecution has treated him hostile. The learned counsels further submit that even after treating the witness as hostile, the question put to P. W.7 by the Public Prosecutor and the answer given to the said question only supports the defence theory that the occurrence was not witnessed by anyone and therefore, the evidence of the eye witnesses cannot be accepted. On the above contentions, we have heard the learned Government Advocate and also perused the entire recorded evidence.

9. The case of the prosecution, which we have extracted above, shows that there was no love-lost between the family of the deceased and A-1 and his friends and a private complaint was also filed by A-2 against the deceased. P.W.1, in cross-examination, admitted that it ended in conviction, though he went on to state that an appeal has been filed against the said conviction. The evidence of P.W.1 that on account of his taking lease of the temple tank to catch fish, there was a civil suit pending between him and A-1 is also supported by the evidence of P.W.6, who has, in his evidence, stated that P.W.1 took the temple tank on lease for catching fish. The facts, therefore, show that there was enmity between the family of P.W.1 and A-1 and his friends. We are aware that motive is a double-edged weapon and from that alone, the prosecution version cannot be accepted or rejected, though in certain cases, it may help the Court to find out the truth or otherwise of the prosecution version.

10. We will now take up the contentions raised by the learned respective counsel for the appellants/accused, since the cause of death of Sundaramoorthy is not disputed before us. The said fact also stands established through the evidence of the doctor, P.W.11, who conducted autopsy and who issued Ex.P.10, the post-mortem certificate. According to the doctor, death was on account of asphyxia due to the cut to blood vessels and on account of shock and haemorrhage due to excessive bleeding. He has also stated in his evidence that injury No.6 is fatal in nature. Since the cause of death is not disputed and as it stands established, we have to only consider whether the accused have inflicted the injuries on the deceased Sundaramoorthy, leading to his death.

11. According to P.W.1, he and his younger son, P.W.2, went to the tamarind tree, which was north of a temple in the village, to pick up

tamarind fruits and according to him, the deceased Sundaramoorthy left for Palayanallur village to engage agricultural labourers. It is his further evidence that while he and P.W.2 were picking tamarind fruits, he saw the deceased coming in a cycle from east and according to him, A-1 to A-4, who were armed with aruvals, ran towards the deceased and cut him indiscriminately, even though the deceased attempted to run away from the place, after receiving the first cut on his left hand. He has, in his evidence, further claimed that he left the scene of occurrence and reached Nachiyar Koil police station, where he narrated the incident to P.W.8, the Sub-Inspector and according to him, the said Sub-Inspector wanted him to give a written complaint and therefore, he had a complaint drafted through somebody to his dictation and then, handed over the same to P.W.8 at 10.00 a.m. P.W.8 also, in his evidence, stated that a complaint was given to him at 10.00 a.m. and he registered a case in Crime No.152 of 1993, though he would contradict P.W.1 by stating that P.W.1 appeared before him with a written complaint and that he did not ask P.W.1 to get a written complaint, when initially he appeared before him and narrated the incident orally. This contradiction between the evidence of P.Ws.1 and 8 as to whether the complaint was initially given orally and thereafter, a written complaint was handed over by P.W.1 on the directions of P.W.8 or whether P.W.1 handed over a written complaint without a direction from P.W.8 is not a serious one to throw away the prosecution version and the Court has to see whether the witnesses would have been present at the time of incident to witness the occurrence.

12. As we stated earlier, the case of the defence is that the deceased was done to death much earlier in point of time and his dead body was seen by D.W.1 and that it was he, who went and informed P.W.1, who, thereafter, proceeded to the scene of occurrence taking along with him his son, P.W.2 and other villagers. In this background, we have to consider the evidence of the witnesses. P.W.1 has admitted in cross-examination that when he was examined by the investigating officer during the course of investigation, he told him that he informed the Village Administrative Officer, P.W.7 and thereafter, proceeded to the police station. This admission of P.W.1 that he informed the investigating officer at the earliest point of time that an information was given to P.W.7 indicates that P.W.7 came to know about the incident from P.W.1. P.W.1 has also admitted that after the occurrence, which took place at 6.00 a.m., he was present at the scene of occurrence till about 9.00 or 9.30 a.m. and thereafter, he left for the police station and reached it within 10 or 15 minutes, where he gave the complaint. He has admitted in cross-examination that he not only informed the Village Administrative Officer, but also his relatives about the incident and that thereafter, he went to the police station to give a complaint. This evidence of P.W.1, therefore, shows that he was at the scene of occurrence till about 9.00 or 9.30 a.m. and before he left for the police station, he informed not only the Village Administrative Officer, but also the relatives and the villagers about the incident. Keeping this in mind, we will now look at the evidence of P.W.7.

13. It is, no doubt, true that P.W.7 was treated hostile and we find no reason as to why the trial Court gave permission to the prosecution to treat him hostile, since he did not detract from his statement given and

recorded under Section 161 Cr.P.C. by the investigating officer. After he was treated hostile, a question was put by the Public Prosecutor whether he questioned the persons present at the scene of occurrence as to how the occurrence had taken place and that they refused to give any details to him. P.W.7 has admitted that he said so to the investigating officer. This was the only question that was put to P.W.7, after he was treated hostile and he was not confronted with any other statement made by him at an earlier point of time, when he was examined during the course of investigation. In the interest of justice, we also perused the original statement of the witness, P.W.7. The said statement given by him and the evidence given by him in chief-examination are one and the same and we are at a loss to understand as to how and why the Presiding Officer gave permission to the prosecution to treat him as hostile and we are also unable to understand as to why the prosecution wanted this witness to be treated as hostile. This remains unexplained. Be that as it may. P.W.7 has stated in his evidence that at about 8.00 a.m., when he was in his house, he received the information about the occurrence and that within five minutes, he reached the scene place. According to him, on reaching the scene of occurrence, he tried to find out whether any of the relatives of the deceased are available and he found one Satyamoorthy standing and crying there and added that he did not see P.W.2 at the place. He has also stated that the other relatives of the deceased were there and they were seen crying and that no one gave him any information as to how Sundaramoorthy met with his end and that therefore, he sent a report to Tahsildar, Kumbakonam and also informed the police officer over phone. The evidence of P.W.7, therefore, shows that he reached the scene of occurrence by 8.00 or 8.15 a.m. and made enquiries with the relatives of the deceased, who were seen crying there and they could not give any definite information as to how the occurrence had taken place and that P.W.2 was not seen at that place.

14. At this juncture, we have to recollect the answer given by P.W.1 in cross-examination that he left the scene of occurrence only at 9 .00 or 9.30 a.m. for the police station and also the recitals found in Ex.P.1. P.W.1 has admitted that he gave information to the Village Administrative Officer and also informed the relatives about the occurrence and thereafter, left the place for the police station, which means that P.W.1 was present at the scene of occurrence till about 9.30 a.m. and that he not only informed the Village Administrative Officer, but also informed the relatives about the occurrence and thereafter, left for the police station. If P.W.1 was an eye witness to the incident, then P.W.7, who reached the place on getting information about the occurrence by 8.00 a.m., would have been informed by the relatives including P.W.1, who was present, as to how the deceased met with his end. At this juncture, it is to be remembered that in Ex.P.1 , it is found mentioned by P.W.1 that he has informed the Village Administrative Officer and other relatives about the occurrence and that thereafter, he has reached the police station to give the complaint. This shows that the said complaint, Ex.P.1, must have been drafted much later. The present evidence of P.W.1 is at variance not only with his earlier statement made in Ex.P.1, but also with the evidence of P.W.7. In this background, the answer given by P.W.7 that he was not given any definite information as to how the deceased met with his end and that P.W.2 was not at the scene of occurrence, though other relatives were seen standing and crying there,

therefore, shows that P.Ws.1, 2 and 4, who supported the prosecution version, could not have been present and witnessed the incident. P.Ws.3 and 5 having turned hostile and the evidence of P.Ws.1, 2 and 4 having been rejected by us for the reasons given above, we find it difficult to uphold the conviction of the appellants/accused and therefore, they are given the benefit of doubt.

15. In the result, the conviction and sentence imposed upon the appellants/accused are set aside and they are acquitted. The appeal is allowed. It is reported that the appellants/accused are on bail. The bail bonds executed by them shall stand cancelled.

Index:Yes
Internet:Yes

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To

1.The Sessions Judge, Thanjavur.

2.The Judicial Magistrate No.II, Kumbakonam.

3.-do- Thro' The Chief Judicial Magistrate, Thanjavur.

4.The District Collector, Tiruchirapalli.

5.The Director General of Police, Chennai.

6.The Chief Judicial Magistrate, Tiruchirapalli.

7.The Superintendent, Central Prison, Tiruchirapalli.

8.The Inspector of Police, Valangiman Circle.

9.The Public Prosecutor, High Court, Madras.

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